

Customer No. 22,852
Attorney Docket No. 7738.147

REMARKS

Favorable reconsideration of this application, as amended, and in light of the following discussion is respectfully requested. Claims 13-14, 16-17, 19-20, 23, 26-28, 31, 34-37, 40, 42-43, 54-90, and 97-102 are pending. Claims 1-2, 4-6, 8-10, 21, 24, 29, 32-33, 39, 44-53, 92-96 and 103-105 have been canceled herein without prejudice to their introduction in a continuation application. Claims 13, 14, 23, 27-28, 31, 35-37, 54, 59, 61, 63-64, 68, 70, 72-73, 77, 79, 81, 86, 88, 90 and 99, have been amended. No new matter is added by these amendments. Claims 106 to 110 have been added. Support for these amendments can be found in the specification at, for example, paragraph 42 of the published application.

First, Applicants would like to thank Examiner Paden for the indication of allowability of claims 39 and 40. Applicants would also like to thank Examiner Paden for the courtesies that she extended to the undersigned during the recent telephone interview. During the interview, the outstanding rejections were discussed; however, no agreement was reached.

Rejection Under 35 U.S.C. §112

Claims 29, 39 and 103-105 have been rejected under 35 U.S.C. §112, second paragraph.

Applicants believe that the inclusion of claim 29 in this rejection was in error. Nevertheless, claim 29 has been cancelled rendering this rejection of claim 29 moot.

Claim 39 has been cancelled. In view of the cancellation of claim 39, Applicants respectfully request the withdrawal of this ground of rejection.

Customer No. 22,852
Attorney Docket No. 7738.147

Regarding claims 103-105, the Examiner continues to state that the term "non-caloric" is scientifically inaccurate. Applicants do not concede this rejection; however, the cancellation of claims 103-105 has rendered it moot in this application. Applicants reserve the right to address these issues in a continuing application. Withdrawal of all outstanding rejections based upon 35 U.S.C. § 112 is respectfully requested.

Rejections over Broz

The Examiner has rejected claims as anticipated under 35 U.S.C. § 102(e) by Broz, published U.S. application 2002/0197376, having a filing date of April 12, 2002 and a provisional filing date of April 12, 2001. Applicants submit herewith the Declaration of Grant DuBois under 37 C.F.R. 1.131 establishing that the invention as presently claimed was reduced to practice prior to the filing date of Broz.

Since U.S. application 2002/0197376 does not claim the same invention as the present application and since it is not a statutory bar under 35 U.S.C. § 102(b), pursuant to 37 C.F.R. 1.131, it is appropriate to establish prior invention by the filing of an oath or declaration from a qualified party, thereby removing the reference as prior art.

In view of this declaration, withdrawal of all rejections based upon Broz is earnestly solicited.

Rejections Based upon Stefandl

The Examiner has rejected claims 1, 4, 5, 8, 9, 21, 29, 32-36, 44-47, 51, 53, 64-67, 69, 71 and 73 over Stefandl.

In view of the cancellation of claims 1, 4, 5, 8, 9, 21, 29, 32-33, 44-47, 51, 53 and the amendment of claims 35-36, 64, (thereby also amending the dependency of claims

Customer No. 22,852
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65-67, 69 and 71) and 73, the rejection has been rendered moot.¹ Again, Applicants reserve the right to further prosecute the cancelled claims in a continuing application.

Rejections based on Marulich

Claims 1, 2, 4-6, 9-10, 21, 24, 26-29, 32-36, 44-52, 64-81, 91-102 and 104-105 have been rejected over Marulich in combination with Cole and DeCock and in some instances further in view of Beyts or Anderson.

In view of the cancellation of claims 1, 2, 4-6, 9-10, 21, 24, 29, 32-33, 44-52, 91-96 and 104-105, the amendment of claims 23 and 31, and the amendment of the dependency of claims 27-28, 35-36, 64 and 73, this rejection has been rendered moot.² Claims 97-102, which were included in this rejection, seem to have been included in error since the claims from which they depend were not also rejected over Marulich. All pending claims are in condition for immediate allowance.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration and the continued examination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

1 Claim 34 depends from claim 31 which was not rejected based upon Stefandi. Thus, applicants have concluded that the inclusion of claim 34 in this rejection was erroneous.

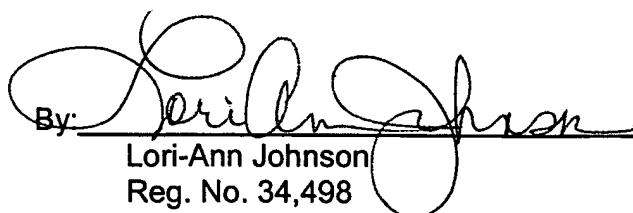
2 Claim 26 depends from claim 23 and claim 34 depends from claim 31. Neither of claims 26 or 31 were rejected based upon Marulich. Thus, applicants have concluded that the inclusion of claims 26 and 34 in this rejection were erroneous.

Customer No. 22,852
Attorney Docket No. 7738.147

Respectfully submitted,

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